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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL  
1021,

Plaintiff and Appellant,

v.

CHABOT-LAS POSITAS COMMUNITY  
COLLEGE DISTRICT et al.,

Defendants and Respondents.

A126144

(Alameda County Super.  
Ct. No. RG09457627)

Service Employees International Union, Local 1021 (SEIU) appeals from the court's order staying arbitration in this action against respondents Chabot-Las Positas Community College District (District) and the Board of Trustees of Chabot-Las Positas Community College District (Board), and denying a stay of the declaratory relief action brought by District (*Chabot-Las Positas Community College Dist. v. Service Employees International Union, Local 1021* (Super. Ct. Alameda County, No. RG08426346)). SEIU contends that the court erred in denying the stay of the declaratory relief action because the action involves the same controversy that is subject to arbitration. We affirm.

**I. FACTUAL BACKGROUND**

On August 31, 2006, SEIU and the District entered into a collective bargaining agreement (CBA) effective July 1, 2006, to June 30, 2009, governing the wages, hours, and other terms and conditions of employment for employees represented by SEIU. The Board approved the CBA on September 19, 2006. The CBA contained a provision

pertaining to the District's vacancies. Article 12.4.1 provides: "When a vacancy exists, a notice will be posted both in-house and advertised to the general public. The pool of in-house applicants (if any) will be forwarded to the first-line supervisor or manager for review with the selection/interview committee. If there are three (3) in-house applicants who qualify (meet representative duties and minimum qualifications of the posted job announcement) after the application screening and interview(s), then one applicant must be selected for the position."

In May 2008, the District notified SEIU that a conflict existed between Article 12.4.1 and the Education Code and its enforcing regulation, specifically, title 5, California Code of Regulations, section 53021.<sup>1</sup> The District argued that section 53021 prohibits "in-house" only recruitment to fill vacancies. It proposed that the CBA be amended to comply with section 53021 and requested that SEIU negotiate an amendment to Article 12.4.1. SEIU refused to negotiate, contending that section 53021 existed prior to the negotiation of the CBA, and that it does not conflict with the District's legal duties. SEIU also asserted it was not obligated to bargain to amend Article 12.4.1 because the provision had not been invalidated by the Legislature or by any court as required by Articles 21.1 and 21.2.<sup>2</sup>

On December 19, 2008, the District filed a complaint for declaratory relief seeking a determination of the legality of Article 12.4.1. SEIU demurred to the complaint on the ground that it was preempted under the Educational Employment Relations Act (Gov.

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<sup>1</sup> The District cited Education Code sections 66010.2, 66030, 66071, 66270, and 87360, and Government Code sections 11135 through 11139.5 as codifying "the state [L]egislature's explicit intent and goals to promote diversity in employment and education at community colleges."

<sup>2</sup> Article 21.1 of the CBA provides that "if any provision of this [a]greement . . . is held to be contrary to law *by a court of competent jurisdiction or by action of the California State Legislature*, such provision . . . will not be deemed valid or subsisting except to the extent permitted by law . . . ." (Italics added.) Article 21.2 then provides that "[i]n the event of suspension or invalidation of any portion of this agreement, the parties agree to meet and commence negotiations within seven (7) working days after such determination for the purpose of arriving at a mutually satisfactory replacement for the invalid section."

Code, § 3540 et seq.) and that the Public Employment Relations Board (PERB) had exclusive initial jurisdiction over the dispute. On April 17, 2009, the court overruled the demurrer to the complaint, finding that the District's claim was not within the exclusive jurisdiction of the PERB.

In February 2009, SEIU filed a grievance seeking to require the District to comply with Article 12.4.1 as the District had a vacancy for which there were at least three qualified applicants. The District denied the grievance, finding that SEIU was not a proper grievant, that the parties' dispute over the legality of Article 12.4.1 was not within the CBA's definition of a grievance and was nonarbitrable, that the grievance was not ripe, and that it was untimely.

On June 15, 2009, SEIU filed a petition to compel arbitration on the issue of whether the District violated Article 12.4.1 and moved to stay the District's declaratory relief action. The District opposed the petition and motion, arguing that the legality of Article 12.4.1 was not an arbitrable issue and the court was required to hear that issue prior to any arbitration. The court granted the motion to compel arbitration, but denied the motion for a stay of the declaratory relief action. The court relied on Article 21.1 of the CBA, concluding that only a court could declare a provision of the CBA to be contrary to law.

## **II. DISCUSSION**

### **A. Standard of Review**

Ordinarily, the standard of review for an order staying or denying arbitration under Code of Civil Procedure<sup>3</sup> section 1281.2, subdivision (c) is abuse of discretion. (*Henry v. Alcove Investment, Inc.* (1991) 233 Cal.App.3d 94, 101; see also *Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 484.) SEIU contends that the correct standard of review is de novo because the court erred in invoking section 1281.2, subdivision (c) and should have invoked section 1281.4. The

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<sup>3</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

issue presented here, however, is not simply which arbitration statute applies, but the meaning of the CBA, the parties' arbitration agreement, which is an issue of law. (*Wilson v. Kaiser Foundation Hospitals* (1983) 141 Cal.App.3d 891, 895.) Accordingly, we review the matter de novo. (*Cardiff Equities, Inc. v. Superior Court* (2008) 166 Cal.App.4th 1541, 1548.)

## **B. Analysis**

The trial court granted the District's request to stay the arbitration pending resolution of the declaratory relief action citing section 1281.2, and finding the action "involves issues that are not subject to arbitration and the determination of that action may make the arbitration unnecessary." We conclude the trial court's order is correct.

Section 1281.2 provides in relevant part that "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy [where] a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy . . . ." (First par.) A court may delay its order to arbitrate if it determines "there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary . . . ." (*Id.*, sixth par.)

As a general rule, doubts as to whether a particular dispute is subject to arbitration are to be resolved in favor of arbitration. But there is no policy compelling arbitration of disputes which the parties have not agreed to arbitrate. (*Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal.3d 473, 481; *California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 205 (*California Correctional Peace Officers Assn.*)). Here, the court correctly determined that the arbitrator had no power to decide the question of the legality of Article 12.4.1. Under Article 8.3.5.4.1 of the CBA, the power of the arbitrator is expressly limited to deciding "cases of alleged violation of

the specific articles and sections of [the CBA].”<sup>4</sup> Additionally, Article 21.1 provides that if a provision of the CBA is found to be contrary to law “by a court of competent jurisdiction or by action of the California State Legislature,” it will be deemed invalid under the CBA. The CBA thus does not provide for a determination by the arbitrator of the illegality of any CBA provisions.

The court was also correct in staying the arbitration pending resolution of the declaratory relief action for two reasons. First, Article 8.1.2 of the CBA does not allow the District to file a grievance to allege that a particular provision of the agreement is illegal or is not in compliance with a statutory provision. Under Article 8.1.2, only SEIU or a bargaining unit member may file a grievance alleging a specific violation of the agreement. Thus, in order to challenge the legality of Article 12.4.1, the District was required, as it did, to file a declaratory judgment action to seek a determination of the provision’s legality inasmuch as Article 12.1 of the CBA contemplates that a provision of the agreement may be deemed invalid only if “held to be contrary to a law by a court of competent jurisdiction or by action of the California State Legislature . . . .”

Second, as we have noted, the CBA expressly limits the arbitrator’s powers to adjudicate a controversy. Article 8.3.5.4.1 of the CBA limits the arbitrator’s power to adjudicating alleged violations of “specific articles and sections of this Agreement.” And, Article 8.3.5.4.2 removes from the arbitrator any power to “add to, subtract from, disregard, alter or modify any of the terms of this Agreement . . . .” Thus, under the agreed upon terms of the CBA, the parties have limited the arbitrator’s decision making powers to “alleged violation[s]” of the articles of the CBA, and have precluded the arbitrator from deciding those matters that would result in adding to, subtracting from, disregarding, altering, or modifying any of the terms of the CBA. (See *Southern Cal. Rapid Transit Dist. v. United Transportation Union* (1992) 5 Cal.App.4th 416, 423-424

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<sup>4</sup> See Article 8.3.5.4.2, which states that “[t]he Arbitrator shall have no power to: add to, subtract from, disregard, alter or modify any of the terms of this Agreement and shall not include issues in the decision that are not directly involved in the case submitted.”

[[t]he powers of the arbitrator are derived from the underlying contract . . .”].) Hence, under the provisions of the CBA, the arbitrator has no power to decide the question of the legality of Article 12.4.1 and whether it complies with title 5, California Code of Regulations, section 53021. (See *Amalgamated Transit Union Local 1277 v. Los Angeles County Metropolitan Transportation Authority* (2003) 107 Cal.App.4th 673, 684-685 [arbitration required unless the agreement cannot be interpreted to cover the dispute].)

In sum, while the courts have held that issues of statutory interpretation may be resolved in arbitration proceedings (see *California Correctional Peace Officers Assn.*, *supra*, 142 Cal.App.4th at pp. 208-209), this is true where the arbitration agreement has a broad scope, for example, permitting arbitration of grievances involving issues of interpretation, application, and enforcement of the agreement (*id.* at pp. 206-211). Similarly, the courts have recognized an arbitrator’s power to decide whether certain contractual provisions are legal where the arbitration agreement grants the arbitrator the power to resolve “any dispute” arising out of the contract. (See *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 7, fn. 1, 30-31.) The arbitration agreement here, however, is not broad, but is narrowly drafted. The arbitrator’s functions are limited by the express terms of the CBA, which restrict his or her decision-making powers to determining whether a specific provision of the CBA has been violated, and which foreclose the arbitrator from modifying any of the agreement’s provisions. Nothing in the CBA grants the arbitrator the authority to decide whether Article 12.4.1 complies with title 5, California Code of Regulations, section 53021.

Citing *Heritage Provider Network, Inc. v. Superior Court* (2008) 158 Cal.App.4th 1146, SEIU argues that the trial court was mandated to stay the declaratory relief action under section 1281.4 because the action involved the same controversy that is subject to arbitration, i.e., the legality of Article 12.4.1.<sup>5</sup> But as we have explained, the parties

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<sup>5</sup> Section 1281.4 provides for a stay of judicial proceeding when “a court of competent jurisdiction . . . has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State . . . .”

never agreed in the CBA to arbitrate that issue nor did they grant the arbitrator the power to resolve that dispute. Section 1281.4 is therefore not applicable.

Finally, SEIU asserts that section 1281.2, subdivision (c) is inapplicable because there are no issues between the parties which are not subject to arbitration or which, when determined, would make arbitration unnecessary. It relies on *RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511 (*RN Solution*). Although *RN Solution* is distinguishable on its facts, the case is instructive. There, the court addressed the issue of whether the third party provisions of section 1281.2, subdivision (c) applied in determining which of 16 causes of action including several tort and battery-related claims might be subject to arbitration.<sup>6</sup> (*RN Solution*, at pp. 1517-1518.) The court held that the third party provisions were inapplicable and that “[i]nstead, the court should have first determined the arbitrable and nonarbitrable claims alleged in the complaint, ordered all of the arbitrable claims to arbitration, and stayed all such claims pending arbitration. The court would then have had discretion to delay its order to arbitrate the arbitrable claims under section 1281.2(c), only if it first determined that the adjudication of the nonarbitrable claims in court might make the arbitration unnecessary. Absent that determination, the arbitrable claims would proceed to arbitration and the nonarbitrable claims would continue to be litigated in court unless a party moved successfully pursuant to section 1281.4, to stay further litigation of such nonarbitrable claims. . . .” (*Id.* at pp. 1521-1522, fns. omitted.)

The court’s ruling here was entirely consistent with *RN Solution*’s interpretation of section 1281.2. The trial court determined that the issue of the legality of Article 12.4.1 was not arbitrable, and that the adjudication of the claim in the declaratory relief action might make the arbitration unnecessary. Indeed, the District concedes the court’s

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<sup>6</sup> Here, both parties are subject to the arbitration agreement; the third party provisions of section 1281.2, subdivision (c) are therefore inapplicable. The third party provisions address the situation where a controversy affects claims by or against other parties not bound by the arbitration agreement. (*RN Solution, supra*, 165 Cal.App.4th at p. 1520.)

determination of the legality issue will render the arbitration unnecessary. If Article 12.4.1 violates the law, it will be excised from the CBA under Article 21.1. If Article 12.4.1 is determined to be valid, the District will proceed with hiring in accordance with its provisions. Consequently, under section 1281.2, the court properly stayed the arbitration pending resolution of the legality issue in the declaratory relief action.

### **III. DISPOSITION**

The order is affirmed.

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RIVERA, J.

We concur:

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RUVOLO, P.J.

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REARDON, J.